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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,128	08/25/2003	Patrick Gwen	976,027	1042

7590 10/03/2005

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EXAMINER

DOE, GRACE S C

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/647,128	GWEN, PATRICK	
	Examiner	Art Unit	
	Grace SC Doe	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/25/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: numerous spelling mistakes (i.e. correct page 1 line 15 "teach" to read as "teeth";), grammar mistakes (i.e. correct page 1 line 19 so that the sentence "As such, various types ..." includes a verb), missing words (i.e. correct page 2 line 5 by inserting "is" following "The accumulation of bacteria[s]" and strike the s on bacteria), and incomplete sentences (i.e. clarify the thought on page 1 line 4 beginning with "In particular, ..."). Please thoroughly proof read the application. Appropriate correction is required.

2. Applicant is advised that should claims 4, 5, and 10-12 be found allowable, claims 14, 17, 18, 19 and 20 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Although claims 15 and 16 specify further limitations, they are objected because they depend from claim 14. To fully consider the Applicant's disclosure, the Examiner has interpreted and analyzed claims 15 and 16 as depending from claim 11.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 18 recites the limitation "second cleaning tool" on page 14 lines 6-7. There is insufficient antecedent basis for this limitation in the claim. Examiner suggests inserting the language, "a second cleaning tool pivotally mounted in said case so as to be movable between a first position within said case to a second position extending outwardly of said case; and", following line 4 on page 14.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-7 and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Allen (US 5,950,265). Allen discloses a multi-purpose tool including a case (See figure 1 part 12; col. 3, lines 2-10), a pivotally mounted first cleaning tool (See figure 2 part 50; col. 3, lines 2-10, col. 3, lines 31-33), a pivotally mounted second cleaning tool (See figure 2 part 44; col. 3, lines 2-10, col. 3, lines 31-33), a pivotally mounted third cleaning tool (See figure 2 part 42; col. 3, lines 2-10, col. 3, lines 31-33), and a pivotally mounted closure member (See figure 2 part 16; col. 3, lines 2-10) that allows for the extension of one tool while covering the remaining tools within the case (col. 4, lines 46-62). The first cleaning tool has an outwardly extending flap that abuts the closure member when the closure member is in the covering position (See figure 3 part 70; col. 3, lines 62-67, col. 4, lines 1-3, col. 4, lines 48-56). The first cleaning tool also discloses a notch, in which the closure member is received when the closure member is in a covering position (See figure 3 part 72; col. 3, lines 62-67, col. 4, lines 1-3, col. 4, lines 48-56) and a lever member extending from the case (See the indented finger holds on tool 50 in figures 1 and 2).

7. Claims 1, 7 and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Seber (US 6,170,104). Seber discloses a multi-functional hand tool containing a case (See figure 2 part 36 and 28; col. 5, lines 1-3), a pivotally mounted first cleaning tool (See figure 2 part 32a; col. 4, lines 20-31, 41-42, 44), a pivotally mounted second cleaning tool (See figure 2 part 32b; col. 4, lines 20-31, 41-42, 44). The first cleaning tool having a lever member extending outwardly of the case (See

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figure 2 part 100a; col. 5, lines 16-24) and angularly offset from the lever member of the second cleaning tool (See figure 2 part 100a, 100b, 100c; col. 5, lines 16-24).

8. Claims 1, 11, 13 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brown (US 5,423,427). Brown discloses dental travel pack containing a case (See figure 8 part 11; col. 3, lines 51-55), a pivotally mounted first cleaning tool (See figure 8 part 13; col. 4, lines 1-7, 55-64), and a pivotally mounted second cleaning tool (See figure 8 part 14; col. 4, lines 1-7, 55-64) wherein the first cleaning tool is capable of being used as a tongue scraper (See figure 8 part 13; col. 4, lines 16-20) and the second cleaning tool is a pick (See figure 8 part 14; col. 4, 21-22). The pack also has a pivotally mounted closure member (See figure 8 part 12; col. 3, lines 51-55).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427), which is part of the dental tool art, as in view of Seber (US 6,170,104) and further in view of Glesser (US 4,776,094). Brown and Seber, discussed above, fail to disclose a case abutment member that contacts the lever. Glesser teaches a case abutment member (See figure 2 part 25; col. 3 lines 48-58; col. 4 lines 24-27) that contacts the lever member (See figure 1 parts 33 and 34; col. 4 lines 13-27) of the first cleaning tool. Glesser is considered to be part of the same analogous art as Brown because the disclosed abutment member pertains to the Applicant's objective of stabilizing a tool in the open position. Similarly Seber is considered analogous art because the disclosed lever member pertains to the Applicant's object of facilitating tool selection. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the Brown Reference with Seber's angularly offset levers in order to facilitate the user's selection and deployment a tool from a retracted to a fully extended position (See col. 5, lines 16-24) and with Glesser's abutment mechanism in order to lock a tool in the open position (See col. 2, lines 10-13).

13. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427) in view of Millner (US 5,766,193). Brown, discussed above, teaches a

dental travel pack containing a plurality of dental care implements (See col. 2, lines 64-66) but fails to teach a tongue scraper having a combination of a plurality of truncated tubes and an outwardly extending blade. Millner, which is also part of the dental tool art, teaches a truncated tongue scraper (See figure 8; col. 3, lines 28-31) having a plurality of scraper pins (See figure 1 part 28; col. 2, lines 55-56) and a blade (See figure 8 part 26; col. 2, lines 47-49). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the Brown Reference with Millner's tongue scraper in order to provide for a more diversified and complete dental travel pack which would further Brown's objective of providing a convenient portable pack having a plurality of dental care implements (See col. 1, 35-38). Inclusion of Millner's tongue scraper promotes complete oral hygiene, which as Millner admonishes, requires cleaning of the tongue as well as the teeth and gums (See col. 1, lines 10-13, 51-56).

14. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427) in view of Elias (US 5,409,022). Brown, discussed above, fails to teach a second toothpick. Elias, which is also part of the dental tool art, teaches a case containing a pivotally mounted second toothpick having a different configuration from the first toothpick (See figure 2 parts 13 and 15; col. 2, lines 64-68; col. 3, lines 1-21). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the Brown Reference with Elias' multiple toothpick configurations in order to more efficiently remove food residue and plaque from different portions of one's teeth (See col. 3, lines 62-68; col. 4 lines 1-23).

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

A. U.S. Pat. No. 5,806,119 (Wood) discloses a case containing at least two pivotally mounted tools and a closure member that allows for the extension of one tool while covering the remaining tools within the case.

B. U.S. Pat. No. 6,698,049 (McLoudrey) discloses a case containing at least two pivotally mounted tools with angularly offset lever members.

C. U.S. Pat. No. 4,805,303 (Gibbs) discloses a case containing at least two pivotally mounted tools.

D. U.S. Pat. No. 6,282,996 (Berg) discloses a case containing at least two pivotally mounted tools.

E. U.S. Pat. No. 6,389,625 (Rivera) discloses a case containing at least two pivotally mounted tools.

F. U.S. Pat. No. 5,927,299 (Rappoport) discloses a case containing pivotally mounted toothpicks of various configurations.

G. U.S. Pat. No. 958,335 (Strock) discloses a case containing one or more pivotally mounted toothpicks.

H. U.S. Pat. Pub. No. 2005/0016561 (Sexson) discloses a pivotally mounted tongue scraper and toothpick.

I. U.S. Pat. No. 6,647,581 (Persad) discloses a pivotally mounted tongue scraper that can be retracted into the handle of a toothbrush.

J. U.S. Pat. No. 5,913,346 (Narwani) discloses a pivotally mounted tongue scraper and toothbrush.

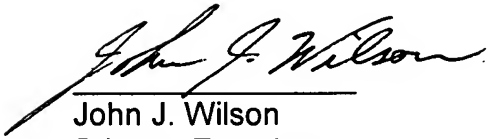
K. U.S. Pat. No. 1891864 (Barrett) discloses a tongue scraper having a plurality of truncated tubes and a blade.

L. U.S. Pat. No. 5,226,197 (Nack) discloses a pivotally mounted tongue scraper and toothbrush.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Grace SC Doe whose telephone number is (571) 272-2831. The examiner can normally be reached on 8:00am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, reading "John J. Wilson", written over a horizontal line.

John J. Wilson
Primary Examiner
Art Unit 3732

A handwritten signature in cursive script, reading "Grace SC Doe", written over a horizontal line.

Grace SC Doe
Examiner
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